

11-2900-057

STATE OF SOUTH DAKOTA
DNA ANALYSIS OF DATABASE SAMPLES CONTRACT

Agreement made and entered into this 10 day of December, 2010, by and between Division of Criminal Investigation, State Forensic Laboratory, a state agency, of 1302 East Hwy 14, Suite 6, Pierre, SD 57501, (the "State") and The Bode Technology Group, Inc., 10430 Furnace Road, Suite 107 Lorton, VA 22079, (the "Vendor").

The State hereby enters into this Agreement for services with Vendor in consideration of and pursuant to the terms and conditions set forth herein.

1. The contract between the State and Vender consists of this Agreement and Exhibit A (the SDFL Request for Proposal). In the case of conflicts, discrepancies, errors or omissions among the Request for Proposal and this Agreement and any subsequent amendments thereto; following is the order of precedence :

- A. This Agreement and amendments; and
- B. SDFL Request for Proposal.

2. The Vendor will perform those services described in the Scope of Work, pages 7-13 of the Request for Proposal document, attached hereto as Exhibit A and by this reference incorporated herein.

3. The Vendor's services under this Agreement shall commence on upon execution by the parties and end on March 31, 2012, unless sooner terminated pursuant to the terms hereof. At its sole discretion, the SDFL may renew the contract for up to four (4) additional twelve month renewal periods.

4. The Vendor will not use State equipment, supplies or facilities. The Vendor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

5. Payment will be made based upon the agreed per sample rate, including State shipped quality control samples for DNA analysis of \$21.95. The TOTAL CONTRACT AMOUNT will not exceed \$87,800 for services through March 31, 2012.

The Vendor shall be paid upon submitting an invoice with the DNA data package in accordance with item 3.29/Appendix F (page 13 & 22) of the Request for Proposal. Payment will also be made pursuant to itemized invoices submitted with a signed state voucher as per Appendix G of the Request for Proposal.

Payment will be made consistent with SDCL ch. 5-26.

Despite any other provision of this Agreement to the contrary, the State reserves the right to review the samples and request re-testing for samples which were not performed in accordance with the provisions of this Agreement at the Vendor's expense, and, the Vendor shall re-test the samples in accordance with this Agreement.

6. The Vendor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not

Audi-Tor 1.4.11
STACEY SMITH 1.6.11

Bode Tech 1/7/11

require the Vendor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

7. The Vendor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance: The Vendor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance: The Vendor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Worker's Compensation Insurance: The Vendor shall procure and maintain workers' compensation and employers' liability insurance as required by the laws of the state of its place of business

Before beginning work under this Agreement, the Vendor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or non-renewal of the policy, the Vendor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Vendor shall furnish copies of insurance policies if requested by the State.

8. While performing services hereunder, the Vendor is an independent contractor and not an officer, agent, or employee of the State of South Dakota. The DNA profile data, the physical database samples, and the data packages submitted to the State are the property of the State.

9. Vendor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Vendor or the State to liability. Vendor shall report any such event to the State immediately upon discovery.

Vendor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Vendor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Vendor to report any event to law enforcement or other entities under the requirements of any applicable law.

10. The Agreement may be terminated by Vendor at its sole option and discretion upon sixty (60) days prior written notice. The Agreement may be terminated by State at its sole option and discretion upon ten (10) days prior written notice. Vendor will advise the State of the extent to which performance has been completed through the termination date, and collect and deliver to the State all samples and whatever work product then exists in the manner requested by the State.

Vendor will submit to the State an itemized invoice for the pro rata value of their services performed through the date of termination. The State, upon payment of accrued amounts so invoiced, will have no further liability or obligation to Vendor for any fees, expenses, or other payment.

In the event the Vendor breaches any of the terms or conditions of the Agreement, the Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Vendor at the time of termination may be adjusted to cover any additional costs to the State because of Vendor's default. Upon termination the State may award another party an agreement to complete the work under the Agreement. If after the State termination for a default by Vendor it is determined that Vendor was not at fault, then the Vendor shall be paid for eligible services rendered and expenses incurred up to the date of termination.

11. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the National Institute of Justice (NIJ) for this purpose. If for any reason NIJ fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

13. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. The Vendor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

15. The Vendor may not use subcontractors to perform the services described herein.

16. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Stacey J. Smith on behalf of the State, and by Teresa (Terry) Smith, on behalf of the Vendor, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

17. Confidentiality Provision

A. Vendor acknowledges the State's need to keep confidential information it maintains, that is subject to various confidentiality statutes and legal privileges held by the State as well as other agencies, state agency clients, in-state and out-of-state government entities, and third parties.

B. Vendor agrees to keep confidential and not reproduce or transfer in any way or manner or share with any person except as specifically authorized by the State any DNA profile data or allelic frequency information from the samples tested in this Agreement.

C. Vendor will enforce the terms of this Confidentiality Provision to its fullest extent. Vendor agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision

D. Violation of this Confidentiality Provision is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law.

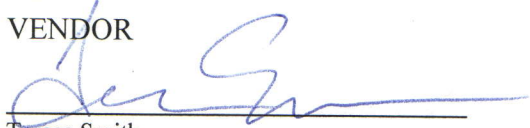
E. Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Vendor or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the DNA profiles, allelic frequencies, or portion thereof.

18. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

19. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

VENDOR


Teresa Smith

STATE


Bryan Gortmaker

Contract Administrator - Bode Technology

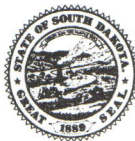
8 Dec 2010
(DATE)

Director of SD Division of Criminal Investigation

10 Dec. 2010
(DATE)

- State Agency Coding (MSA Center) 2911012356.
- State Agency MSA Company for which contract will be paid 2006.
- Object/subobject MSA account to which voucher will be coded _____.
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract: Stacey J. Smith 605-773-7832.

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 2
Pierre, South Dakota 57501-8502

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www.state.sd.us/atg

MARTY J. JACKLEY

ATTORNEY GENERAL

CHARLES D. McGUIGAN

CHIEF DEPUTY ATTORNEY GENERAL

January 4, 2011

Richard Sattgast
State Auditor
500 East Capitol
Pierre, SD 57501

Re: DNA Profile Data

Dear State Auditor Sattgast:

Attached herewith is a Division of Criminal Investigation Forensic Laboratory Contract between the Forensic Lab and The Bode Technology Group, Inc. dated December 10, 2010 – March 31, 2011. This letter is to advise you that as a contract for DNA Analysis samples the RFP provisions set forth in SDCL 5-18-55 thru 62 are not applicable.

Very truly yours,

A handwritten signature in blue ink that reads "Judy Tobin".

Judy Tobin
Accountant

JT/jmt
Enclosures